



January 27, 2004

HOUSE BILL No. 1364

DIGEST OF HB 1364 (Updated January 22, 2004 10:53 am - DI 92)

Citations Affected: IC 4-4; IC 8-9.5.

Synopsis: Tobacco payment securitization. Establishes the tobacco settlement corporation. Permits the corporation to purchase all or part of the state's right to receive payments under the tobacco master settlement agreement and to issue bonds payable from those payments. Provides that the bond proceeds must be used to fund any appropriations made from the master settlement agreement fund by the 2003 budget bill (to the extent that there is insufficient money in the fund for that purpose) and other programs and purposes established by the general assembly. Provides that the corporation is subject to certain administrative rules concerning participation by minority and women's business enterprises in procurement and contracting processes.

Effective: Upon passage.

Kuzman, Harris

January 15, 2004, read first time and referred to Committee on Ways and Means.
January 26, 2004, amended, reported — Do Pass.

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HB 1364—LS 7320/DI 44+



January 27, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1364

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-4-32 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]:

4 **Chapter 32. Tobacco Settlement Corporation**

5 **Sec. 1. As used in this chapter, "board" refers to the governing**
6 **board of the corporation.**

7 **Sec. 2. As used in this chapter, "bonds" means bonds, notes, and**
8 **any other obligations and financing arrangements issued or**
9 **entered into by the corporation under this chapter and any such**
10 **bonds, notes, obligations, or other financing arrangements entered**
11 **into to refund the foregoing, whether on a current or an advance**
12 **basis.**

13 **Sec. 3. As used in this chapter, "corporation" refers to the**
14 **tobacco settlement corporation established by this chapter.**

15 **Sec. 4. As used in this chapter, "financing costs" means**
16 **capitalized interest, capitalized operating expenses, debt service**
17 **reserves, operating reserves, and any cost of issuance, credit**

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enhancement, swap agreement under IC 8-9.5-9, or item of expense directly or indirectly payable or reimbursable by the corporation and related to the authorization, sale, or issuance of the bonds, including, but not limited to, underwriting fees and fees and expenses for professional consultants and fiduciaries.

Sec. 5. As used in this chapter, "master settlement agreement" has the meaning set forth in IC 24-3-3-6.

Sec. 6. As used in this chapter, "net proceeds" means the amount of proceeds remaining following each sale of bonds that is not required by the corporation to pay financing costs.

Sec. 7. As used in this chapter, "qualifying statute" has the meaning set forth in the master settlement agreement. For purposes of this chapter, IC 24-3-3 is the qualifying statute.

Sec. 8. As used in this chapter, "residual interests" means the income of the corporation that exceeds the corporation's obligations to fund any reserve fund or to pay its operating expenses, debt service, whether at maturity or upon redemption, or any other contractual obligations incurred in connection with the issuance or management of, or security for, bonds.

Sec. 9. As used in this chapter, "sales agreement" means any agreement authorized under this chapter in which the state sells to the corporation all or a part of the amounts and revenues required to be paid by tobacco product manufacturers to the state and the state's rights to receive the amounts and revenues under the master settlement agreement.

Sec. 10. As used in this chapter, "state" means the state of Indiana. If this chapter authorizes or requires the state to take an action and does not specify the individual or entity that is to carry out the action, the budget agency shall carry out the action on behalf of the state unless another state agency, state office, or state officer is required by law or contract to act on behalf of the state in carrying out the action.

Sec. 11. (a) The general assembly finds the following:

(1) The state entered into the master settlement agreement with certain tobacco product manufacturers on November 23, 1998.

(2) Tobacco product manufacturers subject to the master settlement agreement are liable to make payments to the state from time to time, subject to the terms and conditions of, and payable solely as provided in, the master settlement agreement.

(3) One (1) or more tobacco product manufacturers may be

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unwilling or unable to fulfill their obligations under the master settlement agreement in the future as a result of:

(A) a decline in cigarette consumption in the United States;

(B) a decline in market share of a tobacco product manufacturer;

(C) a decline in the market share of a tobacco product manufacturer and a concomitant increase in the market share of domestic and international tobacco product manufacturers that are not subject to the master settlement agreement;

(D) an allegation by a tobacco product manufacturer that the state does not diligently enforce the state's qualifying statute (IC 24-3-3);

(E) a dispute about the amount payable by a tobacco product manufacturer under the master settlement agreement;

(F) a lawsuit challenging the master settlement agreement that could result in a determination that the master settlement agreement is void or unenforceable or violates federal antitrust law;

(G) a lawsuit brought against a tobacco product manufacturer by an individual smoker or nonsmoker and the individual's family, it being reported that as of December 31, 2002, there were approximately one thousand five hundred (1,500) active individual smoking and health care cost recovery cases pending in the United States;

(H) a lawsuit brought against a tobacco product manufacturer as a class action in state or federal court alleging injury as a result of smoking, seeking health care cost recovery, charging consumer fraud, or alleging violations of consumer protection or unfair trade statutes;

(I) a lawsuit brought by an asbestos manufacturer against a tobacco product manufacturer seeking contribution or reimbursement for amounts expended by the asbestos manufacturer in connection with defense of claims and payment of damages for asbestos injury allegedly caused, in whole or in part, by the tobacco product manufacturer; and

(J) a bankruptcy by a tobacco product manufacturer, which could result in the delay, reduction, or elimination of payments to the state by the tobacco product

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1 manufacturer.

2 (b) As a result of the findings described in subsection (a), the
3 general assembly finds that the state is at risk of loss of the
4 amounts and revenues due under the master settlement agreement
5 and that it will benefit the health, safety, and general welfare of the
6 state's citizens to assure a current and reliable source of revenue
7 for the state through the sale and securitization of the payments
8 due the state from time to time under the master settlement
9 agreement as provided in this chapter.

10 (c) The general assembly declares it to be the public policy of the
11 state and a recognized governmental function to provide for the
12 securitization of the amounts and revenues due under the master
13 settlement agreement.

14 (d) This chapter, being necessary for the health, safety, and
15 general welfare of the state and its citizens, shall be liberally
16 construed to effect its purposes.

17 (e) The general assembly finds that the following activities are
18 necessary and proper and serve a public purpose or purposes
19 through the promotion of economic development, education,
20 health, safety, and general welfare and will be of benefit to the state
21 and its citizens:

- 22 (1) The creation of the corporation.
- 23 (2) Entering into one (1) or more sales agreements.
- 24 (3) The sale to the corporation of all or a part of the amounts
25 and revenues required to be paid by tobacco product
26 manufacturers to the state and the state's right to receive the
27 amounts and revenues under the master settlement
28 agreement.
- 29 (4) The issuance of bonds by the corporation.

30 Sec. 12. The tobacco settlement corporation is established. The
31 corporation is a public body corporate and politic, separate from
32 the state, and not a state agency. The exercise by the corporation
33 of its powers constitutes an essential public and governmental
34 function.

35 Sec. 13. (a) The powers of the corporation are vested in and
36 shall be exercised by a board consisting of the following seven (7)
37 members:

- 38 (1) The governor, or the governor's designee, who serves as
39 chairperson.
- 40 (2) The lieutenant governor, or the lieutenant governor's
41 designee, who serves as vice chairperson.
- 42 (3) The treasurer of state, or the treasurer of state's designee.

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(4) Four (4) members appointed by the governor who are individuals of known probity and who possess adequate capacity for the performance of the duties of members of the corporation. Not more than two (2) of the members appointed under this subdivision may be members of the same political party.

(b) The board shall elect from among the board's members the other officers the board considers necessary or convenient.

(c) The term of the members of the board appointed by the governor shall be four (4) years from the date of their appointment, except that the terms of two (2) of the initial appointees, as determined by the governor, shall be for two (2) years from the date of their appointment.

(d) Each member of the board appointed by the governor:

(1) shall hold office for the term of the member's respective appointment;

(2) shall continue to serve after the expiration of the appointment until a successor is appointed and qualified;

(3) is eligible for reappointment; and

(4) serves at the pleasure of the governor and may be removed from office by the governor at any time.

(e) The members of the board are not entitled to any compensation for their services but are entitled to reimbursement for actual and necessary expenses on the same basis as state employees.

Sec. 14. Four (4) members of the board constitute a quorum. Four (4) affirmative votes are required for the board to take action.

Sec. 15. Meetings of the board shall be held in accordance with IC 5-14-1.5 and at the call of the chairperson or when a majority of the members of the board so requests.

Sec. 16. (a) This section applies to a meeting of the board at which at least four (4) members of the board are physically present at the place where the meeting is conducted.

(b) A member of the board may participate in a meeting of the board by using a means of communication that permits:

(1) all other members of the board participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

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(c) A member of the board who participates in a meeting under subsection (b) is considered to be present at the meeting.

(d) The memoranda of the meeting prepared under IC 5-14-1.5-4 must also state the name of each member of the board who:

(1) was physically present at the place where the meeting was conducted;

(2) participated in the meeting by using a means of communication described in subsection (b); and

(3) was absent.

Sec. 17. Any member or employee of the corporation who has, will have, or later acquires an interest, direct or indirect, in any transaction with the corporation shall immediately disclose the nature and extent of the interest in writing to the corporation as soon as the member or employee has knowledge of the actual or prospective interest. The disclosure shall be announced in open meeting and entered into the minutes of the corporation. Upon disclosure, the member or employee shall not participate in any action by the corporation authorizing the transaction. However, such an interest does not invalidate actions by the corporation with the participation of the disclosing member prior to the time when the member became aware of the interest.

Sec. 18. The corporation may, without the approval of the attorney general or any other state officer, employ independent counsel, bond counsel, other attorneys, financial advisers, investment bankers, auditors, other technical or professional assistants, and such other officers, agents, and employees (including an executive director), permanent or temporary, as the corporation considers necessary or convenient to carry out the efficient operation of the corporation, and shall determine the qualifications, duties, compensation, and terms of service of all such individuals. The chairperson may appoint the initial executive director. The executive director is the chief operating officer of the corporation, and the board shall establish the executive director's duties and responsibilities, including the powers that the corporation has under this section. The board may delegate to an officer of the corporation, the executive director, or one (1) or more other employees or agents of the corporation such duties and responsibilities as the board considers necessary or convenient, including the powers that the corporation has set forth in this section. Employees of the corporation shall not be considered employees of the state. The corporation is subject to the provisions

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of 25 IAC 5 concerning equal opportunities for minority business enterprises and women's business enterprises to participate in procurement and contracting processes.

Sec. 19. (a) The corporation shall:

(1) adopt a policy establishing a code of ethics for its employees; or

(2) decide it wishes to be under the jurisdiction and rules adopted by the state ethics commission.

(b) A code of ethics adopted under this section must be consistent with state law and approved by the governor.

Sec. 20. The corporation has all the general powers necessary to carry out its purposes and duties and to exercise its specific powers. In addition to other powers specified in this chapter, the corporation may:

(1) sue and be sued in the name of the corporation;

(2) make and execute agreements, contracts, and other instruments, with any public or private person, in accordance with this chapter;

(3) invest money held by the corporation or on its behalf under any trust agreement of the corporation or otherwise in the manner determined by resolution of the corporation or under the trust agreement (an investment under this subdivision is not restricted by or subject to any other law);

(4) establish any general or special funds, accounts, or subaccounts, and controls on deposits to and disbursements from them, as it finds necessary, desirable, or convenient for the implementation of this chapter;

(5) procure insurance, other credit enhancements, and other financing arrangements for its bonds to fulfill its purposes under this chapter, including but not limited to municipal bond insurance and letters of credit;

(6) accept appropriations, gifts, grants, loans, or other aid from public or private entities;

(7) establish a stable source of revenue to be used for the purposes set forth in this chapter;

(8) enter into one (1) or more sales agreements with the state for purchase of all or a part of the amounts and revenues due to the state under the master settlement agreement, and of the state's rights to receive those amounts and revenues;

(9) issue bonds in one (1) or more series;

(10) sell, pledge, or assign, as security, all or a part of the revenues derived by the corporation under any sales

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agreement, to provide for and secure the issuance of bonds;
 (11) manage its funds, obligations, and investments as necessary and as consistent with its purposes;
 (12) without complying with IC 4-22-2, adopt, amend, and repeal bylaws, rules, and regulations not inconsistent with this chapter and necessary or convenient to regulate its affairs and to carry into effect the powers, duties, and purposes of the corporation and conduct its business; and
 (13) exercise any other power reasonably required, convenient, or desirable to implement the purposes of this chapter.

The rule of law that any doubt as to the existence of a power of the corporation shall be resolved against the existence of that power is abrogated. Any doubt as to the existence of a power of the corporation shall be resolved in favor of its existence.

Sec. 21. The corporation may not:

- (1) exercise the power of eminent domain; or
- (2) levy taxes of any kind.

Sec. 22. (a) The corporation may issue its bonds in principal amounts as may be necessary or appropriate to provide sufficient funds for:

- (1) the exercise of any of its powers or achievement of its purposes;
- (2) the payment of debt service on its bonds;
- (3) the establishment of operating reserves and debt service or other reserves to secure the bonds;
- (4) the costs of issuance of its bonds and credit enhancements, if any; and
- (5) all other financing costs or other expenditures of the corporation incident to and necessary to carry out its purposes or powers.

Subject to section 36 of this chapter, the net proceeds of bonds shall be deposited in any fund specified by law, except that the net proceeds of refunding bonds shall be deposited in accordance with a trust agreement of the corporation.

(b) Before issuing bonds under this chapter, the corporation shall publish a notice of its determination to issue the bonds. The notice shall be published one (1) time in one (1) newspaper published and of general circulation in each of the six (6) counties having the greatest populations in the state. No action to contest the validity of:

- (1) a series of bonds issued by the corporation; or

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(2) any sales agreement entered into by the corporation and the state related to the bonds; may be brought after the fifteenth day following the publication of the notice. If an action challenging the bonds or sales agreement is not brought within the time prescribed by this subsection, the bonds or sales agreement are conclusively presumed to be authorized fully and valid under the laws of the state, and any individual or entity is estopped from further questioning the authorization, validity, execution, delivery, or issuance of the bonds or the sales agreement.

(c) The bonds, when issued, must have all the qualities of negotiable instruments, subject to provisions for registration, under IC 26-1 and are incontestable in the hands of a bona fide purchaser or owner of the bond for value. Bonds issued under this chapter are exempt from the registration requirements of IC 23-2-1 and any other state securities registration statutes.

(d) The corporation's bonds shall:

- (1) bear the date or dates;
- (2) mature at the time or times;
- (3) be in the denominations;
- (4) be in the form;
- (5) be registered or registrable in the manner;
- (6) be made transferable, exchangeable, and interchangeable;
- (7) be payable in the medium of payment and at the place or places;
- (8) be subject to the terms of redemption;
- (9) bear the fixed or variable rate or rates of interest;
- (10) be payable at the time or times; and
- (11) be sold at a public or negotiated sale in the manner and at the price or prices;

as the corporation determines.

(e) The bonds shall be executed by one (1) or more officers of the corporation and by the trustee or paying agent. Execution of the bonds may be by manual or facsimile signature.

(f) The bonds of the corporation are subject to the terms, conditions, covenants, and protective provisions that are found necessary or desirable by the corporation, including, but not limited to, pledges of the corporation's assets, setting aside of reserves, and other provisions the corporation finds are necessary or desirable for the security of bondholders.

(g) Any pledge of revenues to be derived by the corporation under a sales agreement or from any other source, and the right to

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1 receive revenues under a sales agreement or from any other
 2 source, or any pledge of a special fund, account, or subaccount
 3 created by the corporation, together with any investment earnings,
 4 is valid and binding at the time the pledge is made. Property so
 5 pledged is immediately subject to the lien of the pledge without any
 6 physical delivery of the property or further act. The lien of such a
 7 pledge is valid and binding as against all parties having claims of
 8 any kind in tort, contract, or otherwise against the corporation,
 9 regardless of whether the parties have notice of the lien.
 10 Notwithstanding any other provision of law to the contrary, the
 11 resolution or trust agreement of the corporation or any other
 12 instrument by which the pledge is created need not be recorded or
 13 filed except in the records of the corporation to perfect the pledge.

14 (h) Neither a member of the board nor an individual executing
 15 bonds or notes issued under this article is liable personally on the
 16 bonds or notes.

17 (i) The corporation may, out of any funds or revenues available
 18 therefor, purchase its bonds in the open market or by a negotiated
 19 purchase authorized by the board.

20 Sec. 23. (a) The bonds issued under this chapter by the
 21 corporation constitute the special obligations only of the
 22 corporation and are payable solely from and secured exclusively by
 23 the pledge by the corporation of certain funds and revenues and
 24 rights to receive funds or revenues as provided in the resolution or
 25 trust agreement authorizing or securing the bonds in accordance
 26 with this chapter. Neither the faith and credit nor taxing power of
 27 the state or any political subdivision of the state is pledged to the
 28 payment of principal or interest on the bonds. Each bond of the
 29 corporation must plainly state on its face that the bond does not
 30 constitute an indebtedness or lending of the credit of the state
 31 within the meaning or application of any constitutional provision
 32 or limitation but that it is payable solely as to both principal and
 33 interest from the funds, revenues, and rights pledged under this
 34 chapter. This chapter and the covenants and undertakings of the
 35 corporation as expressed in any proceedings preliminary to or in
 36 connection with the issuance of the bonds may be enforced by a
 37 bondholder by action for injunction or mandamus against the
 38 corporation or any officer, agent, or employee of the corporation,
 39 but no action for monetary judgment may be brought against the
 40 state for any violations of this chapter.

41 (b) All property of the corporation is public property devoted to
 42 an essential public and governmental function and purpose and is

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1 exempt from all taxes and special assessments, direct or indirect,
 2 of the state or a political subdivision of the state. All bonds issued
 3 under this chapter are issued by a body corporate and politic of the
 4 state, but not a state agency, and for an essential public and
 5 governmental purpose, and the bonds, the interest thereon, the
 6 proceeds received by the holder from the sale of the bonds to the
 7 extent of the holder's cost of acquisition proceeds received upon
 8 redemption prior to maturity and proceeds received at maturity
 9 and the receipt of the interest and proceeds are exempt from
 10 taxation in the state for all purposes except the financial
 11 institutions tax imposed under IC 6-5.5 or the state inheritance tax
 12 imposed under IC 6-4.1.

13 Sec. 24. Contracts entered into by the corporation shall be
 14 entered into in the name of the corporation and not in the name of
 15 the state of Indiana. The obligations of the corporation under the
 16 contracts are obligations only of the corporation and are not in any
 17 way obligations of the state of Indiana.

18 Sec. 25. Bonds issued under this chapter are securities:

- 19 (1) in which all public officers and agencies of the state,
 20 insurance companies, banking associations, investment
 21 companies, executors, administrators, trustees, and other
 22 fiduciaries may properly and legally invest funds, including
 23 capital in their control or belonging to them; and
 24 (2) that may properly and legally be deposited with and
 25 received by any officer or agency of the state for any purpose
 26 for which the deposit of bonds or obligations of the state is
 27 now or may in the future be authorized by law.

28 Sec. 26. (a) Without complying with any other law governing the
 29 sale or disposition of property by the state, the state may sell and
 30 assign to the corporation, and the corporation may purchase, all of
 31 the state's right to receive all or any part of the state's annual share
 32 of the amounts and revenues due to the state under the master
 33 settlement agreement and of the state's rights to receive those
 34 amounts and revenues. The state may make multiple sales and
 35 assignments to the corporation under this section, and the
 36 corporation may make multiple purchases under this section. The
 37 state, including the governor and the attorney general, may take
 38 any action necessary or convenient to facilitate and complete a sale.
 39 The corporation may take any action necessary or convenient to
 40 facilitate and complete a purchase.

41 (b) A sale and assignment made under this section is
 42 irrevocable. All or a part of the amounts and revenues, and the

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right to receive the amounts and revenues, sold to the corporation shall be pledged to the bondholders. The sale and assignment shall constitute and be treated as a true sale and absolute transfer of the property so sold and assigned and not as a pledge or other security interest granted by the state for any borrowing. The characterization of a sale and assignment as an absolute transfer shall not be negated or adversely affected if only a part of the amounts and revenues due to the state under the master settlement agreement is being sold and assigned, if the state acquires or retains an ownership interest in a part of the amounts and revenues due under the master settlement agreement not so sold and assigned, or for any other reason.

(c) The state covenants and agrees with the holders of any bonds that so long as any bonds of the corporation issued under this chapter are outstanding and unpaid, the state will not limit or alter the rights vested in the corporation to fulfill the terms of any agreements made with, or make payments to, the holders of the bonds or in any way impair the rights and remedies of the bondholders, until the bonds, together with interest thereon, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholder are fully paid, satisfied, and discharged.

(d) The terms of any sales agreement must provide that on and after the effective date of the sale and assignment:

(1) the state shall have no right, title, or interest in the property sold and assigned;

(2) the property sold and assigned is the property of the corporation and not the property of the state;

(3) the property sold and assigned shall be owned, received, held, and disbursed by the corporation or its trustee or assignee, and not by the state;

(4) none of the property sold and assigned shall be subject to garnishment, levy, execution, attachment, or other process, writ (including writ of mandate), or remedy in connection with the assertion or enforcement of any debt, claim, settlement, or judgment against the state; and

(5) the part of the amounts and revenues due under the master settlement agreement that are sold and assigned to the corporation must be paid directly to the corporation or its trustee or assignee and shall not be considered money drawn from the state treasury.

(e) Any sales agreement may include such other agreements and

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covenants of the state as may be permitted by the constitution of the state and as may be necessary or convenient for the sale and assignment of the portion of the amounts and revenues due under the master settlement agreement and the issuance of bonds to finance the purchase by the corporation.

(f) The state shall:

- (1) notify the independent auditor and the escrow agent under the master settlement agreement that all or a part of the amounts and revenues due under the master settlement agreement has been sold and assigned to the corporation; and
- (2) irrevocably instruct the independent auditor and the escrow agent that, after the date of the notice under subdivision (1), all or a portion of the amounts and revenues due under the master settlement agreement sold and assigned to the corporation is to be paid directly to the trustee under the trust agreement of the corporation for the benefit of the owners of the bonds secured by a pledge of those amounts and revenues, until the bonds are no longer outstanding under the resolution or trust agreement.

Sec. 27. Members of the board, the officers and employees of the corporation, the agents of the corporation, and any other individuals executing bonds issued under this chapter are not subject to personal liability or accountability by reason of any act authorized by this chapter, including, without limitation, the issuance and sale or placement of bonds, the failure to issue bonds, the execution and delivery of bonds, and the exercise of any other powers contemplated by this chapter.

Sec. 28. (a) The corporation is prohibited from filing a voluntary petition under chapter 9 of the federal bankruptcy code or any corresponding chapter or section that may, from time to time, be in effect. A governmental officer, governmental organization, or other entity or person may not authorize the corporation to be a debtor under chapter 9 of the federal bankruptcy code or any successor or corresponding chapter or sections.

(b) This section shall be considered to be incorporated in any contractual obligation owed to the holders of bonds issued under this chapter. Any such contractual obligation shall not subsequently be modified by state law before the date that is three hundred sixty-six (366) days after the date upon which the corporation no longer has any bonds outstanding.

Sec. 29. The corporation shall dissolve not later than two (2) years from the date of final payment of all of its outstanding bonds

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and the satisfaction of all outstanding obligations of the corporation, except to the extent necessary to remain in existence to fulfill any outstanding covenants or provisions with bondholders or third parties made in accordance with this chapter. Upon dissolution of the corporation, all the corporation's property, including the corporation's right, title, and ownership interest in amounts and revenues due under the master settlement agreement, shall be transferred and assigned to the state. The amounts and revenues transferred to the state shall be deposited in or to the credit of the state general fund. The corporation shall execute all necessary assignments and other documents as may be necessary or convenient to transfer and assign its property to the state.

Sec. 30. Before issuing any bonds, the corporation shall enter into a sales agreement that includes the agreement of the state to:

(1) diligently enforce the corporation's right to receive the amounts and revenues due under the master settlement agreement and sold under the sales agreement, to the full extent permitted by the master settlement agreement;

(2) diligently enforce the qualifying statute as contemplated by the master settlement agreement against all tobacco product manufacturers that are selling tobacco products in Indiana and are not signatories to the master settlement agreement;

(3) neither amend the master settlement agreement nor take any other action that would in any way:

(A) alter, limit, or impair the corporation's right to receive the portion of the amounts and revenues due under the master settlement agreement and sold under the sales agreement;

(B) limit or alter the rights vested in the corporation by this chapter or other law to fulfill its agreements with the bond owners; or

(C) impair the rights and remedies of the bond owners or the security for the bonds;

until the bonds, together with the interest on the bonds and all costs and expenses in connection with any action or proceedings by or on behalf of the bond owners, are fully paid and discharged;

(4) not amend, supersede, or repeal the qualifying statute in any way that would violate section 26(c) of this chapter; and

(5) take no action that would adversely affect the tax exempt status of any tax exempt bond, and, to the extent permitted by

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law, take all reasonable actions necessary to protect the tax exempt status of any tax exempt bond.

Subdivision (3) shall not be construed to preclude the state's regulation of smoking and taxation and regulation of the sale of cigarettes or other tobacco products.

Sec. 31. The corporation shall contract with an independent certified public accountant for an annual financial audit of the corporation. The certified public accountant shall present an audit report not later than seven (7) months after the end of each fiscal year of the corporation.

Sec. 32. The state board of accounts may at any time conduct an audit of the corporation.

Sec. 33. The corporation shall submit copies of its annual budget and the audit report referred to in section 31 of this chapter to the budget director, the legislative council, and the state board of accounts. The report to the legislative council must be in an electronic format under 5-14-6.

Sec. 34. Income or revenues of the corporation not required to meet its obligations, including redemption obligations on its bonds, shall be paid to the state general fund if directed by the governor.

Sec. 35. (a) As used in this section, "sale part" means the part of the punitive damage award payment determined under STEP FOUR of the following formula:

STEP ONE: Determine the total of the amounts and revenues that the corporation is entitled to receive under any sales agreements and assignments entered into under section 26 of this chapter.

STEP TWO: Determine the total of the amounts and revenues due to the state under the master settlement agreement, without regard to any sales agreements and assignments entered into under section 26 of this chapter.

STEP THREE: Divide the STEP ONE amount by the STEP TWO amount.

STEP FOUR: Multiply the punitive damage award payment by the STEP THREE result.

(b) This section applies upon the entry of a judgment that includes a punitive damage award in a civil action related to tobacco products in which:

(1) the state or a state agency is the party to the action receiving the award; and

(2) a tobacco manufacturer who participates in the master settlement agreement is the party against whom the judgment

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was entered.

IC 34-51-3-6 does not apply to such a punitive damage award.

(c) Upon entry of a judgment described in this section, the right of the state or a state agency to receive the sale part of the punitive damage award payment described in this section is assigned to the corporation. For as long as this assignment is in effect, any sale portion of a punitive damage award payment received by the state or a state agency in settlement of a judgment described in this section or as satisfaction or partial satisfaction of a judgment to which this section applies shall be considered to be held for the benefit of the corporation and shall be remitted immediately after receipt of the payment, at the direction of the treasurer of state, to the corporation subject to any pledge under this chapter.

(d) The corporation may spend money received under this section in accordance with this chapter, subject to any pledge under this chapter.

(e) The part of the punitive damages award that exceeds the sale part under this section shall be paid to the state or a state agency, as applicable, and used as otherwise provided by law.

(f) The assignment under this section terminates upon the earlier of the date on which:

- (1) the corporation is dissolved under section 29 of this chapter;
- (2) all outstanding bonds and other agreements of the corporation have been paid in full or otherwise discharged; or
- (3) a state court has entered a final judgment from which no further appeal is allowed ordering the judgment debtor tobacco manufacturer to pay the state or a state agency both its obligations under the master settlement agreement and any punitive damages to be paid to the state or a state agency without setoff, credit, or reduction of one (1) obligation on account of the other.

Sec. 36. (a) As used in this section, "account" refers to an account established under this section.

(b) As used in this section, "fund" refers to the tobacco securitization endowment fund established under this section.

(c) There is established the tobacco securitization endowment fund, and in the fund there are established the following three (3) accounts:

- (1) The allocation account.
- (2) The prior commitments account. The purpose of the prior commitments account is to ensure that money is available to

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cover the appropriations made from the tobacco master settlement agreement fund for purposes and programs authorized by P.L.224-2003.

(3) The tobacco securitization endowment account. The purpose of the tobacco securitization endowment account is to ensure that money is available to fund programs and purposes to be authorized by the general assembly to be of benefit to the health, safety, and general welfare of the state and its citizens.

The fund and accounts are state funds and accounts. The budget agency shall administer the fund and accounts. The treasurer of state shall invest money in the fund and accounts. Money in the fund and accounts shall not be combined or commingled for cash management or investment purposes with any other fund or account. The earnings from investment of money in the fund and accounts accrue to the fund. Money in the fund and accounts do not revert to the state general fund at the end of any state fiscal year.

(d) The corporation shall deposit, or cause to be deposited, and allocate, or cause to be allocated, the proceeds of the sale of bonds (other than refunding bonds) in the following manner:

(1) The following provisions apply before July 1, 2005:

(A) Except as provided in subsection (e), the proceeds shall be deposited in the allocation account. The state shall transfer money on deposit in the allocation account to the prior commitments account and the tobacco securitization endowment account from time to time as provided by clauses (B) and (C).

(B) If the amount of money in the tobacco master settlement agreement fund created under IC 4-12-1-14.3 is not sufficient to cover any of the appropriations made from the tobacco master settlement agreement fund for the purposes and programs authorized by P.L.224-2003, the state shall transfer from the allocation account to the prior commitments account from time to time money in an amount sufficient to fund those programs and purposes in the amount authorized by P.L.224-2003. The budget director shall determine how much money to transfer to the prior commitments account.

(C) The state shall transfer to the tobacco securitization endowment account all money on deposit in the allocation account not transferred to the prior commitments account.

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1 Money may not be expended from the tobacco
 2 securitization endowment account until the general
 3 assembly establishes programs and purposes to be funded
 4 by the fund. The general assembly reasonably expects to
 5 establish the programs and purposes effective not later
 6 than July 1, 2005.

7 **(2) The following provisions apply after June 30, 2005:**

8 **(A) On July 1, 2005, the state shall transfer to the tobacco**
 9 **securitization endowment account all the money on deposit**
 10 **in the allocation account and the prior commitments**
 11 **account, and the state shall close the allocation account and**
 12 **the prior commitments account.**

13 **(B) Except as provided in subsection (e), the proceeds shall**
 14 **be deposited in the fund. The state shall transfer money on**
 15 **deposit in the fund from time to time for the programs and**
 16 **purposes established by the general assembly.**

17 **(e) Notwithstanding any other law:**

18 **(1) the state is not required to deposit in the fund or any**
 19 **account proceeds of the sale of bonds needed to pay financing**
 20 **costs; and**

21 **(2) the state and the corporation shall:**

22 **(A) make any deposits to, investments in, and expenditures,**
 23 **transfers, and payments from the fund or any account; and**

24 **(B) take other actions, including the making of investments**
 25 **in other state funds and accounts;**

26 **as may be necessary to ensure that the tax exempt status of**
 27 **any tax exempt bond is not adversely affected.**

28 **Before acting under subdivision (2), the corporation may obtain**
 29 **the written advice of bond counsel.**

30 SECTION 2. IC 8-9.5-9-2, AS AMENDED BY P.L.273-1999,
 31 SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 UPON PASSAGE]: Sec. 2. As used in this chapter, "authority" means:

33 (1) an authority or agency established under IC 8-1-2.2 or
 34 IC 8-9.5 through IC 8-23;

35 (2) the commission established under IC 4-13.5;

36 (3) only in connection with a program established under
 37 IC 13-18-13 or IC 13-18-21, the bank established under IC 5-1.5;

38 **or**

39 (4) a fund or program established under IC 13-18-13 or
 40 IC 13-18-21; **or**

41 **(5) the corporation established under IC 4-4-32.**

42 SECTION 3. IC 8-9.5-9-8, AS AMENDED BY P.L.273-1999,

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1 SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 UPON PASSAGE]: Sec. 8. (a) With respect to all leases and contracts
3 entered into by the authority ~~with the Indiana department of~~
4 ~~transportation, the Indiana department of administration, a fund or~~
5 ~~program established under IC 13-18-13 or IC 13-18-21, or any other~~
6 ~~entity~~ to support obligations, the lease or contract may provide that
7 payments under a swap agreement are treated as a debt service on the
8 obligations or as additional rental or other payment due under the lease
9 or contract as the authority may determine.

10 (b) The authority may determine that payments under a swap
11 agreement may be integrated with payments on obligations for the
12 purpose of meeting any statutory requirements related to the issuance
13 of obligations. **The authority may also determine to secure its**
14 **payments under a swap agreement with the same collateral**
15 **securing the related obligations, either on a parity or on a**
16 **subordinate basis.**

17 SECTION 4. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1364, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 16, delete "requirements for its" and insert "**obligations to fund any**".

Page 2, line 18, delete "under any resolution or that may be".

Page 2, line 19, delete "of the" and insert "**or management of, or security for,**".

Page 2, line 31, after "state" insert "**in carrying out the action**".

Page 2, line 38, after "of" insert "**, and payable solely as provided in,**".

Page 2, delete lines 40 through 42.

Page 3, line 1, delete "(4)" and insert "(3)".

Page 3, line 2, delete "pay" and insert "**fulfill**".

Page 3, line 2, delete "limited debt".

Page 3, line 2, after "obligations" insert "**under the master settlement agreement**".

Page 3, line 18, delete "brought against" and insert "**challenging**".

Page 3, line 20, after "unenforceable" insert "**or violates federal antitrust law**".

Page 3, line 29, delete "and" and insert "**or**".

Page 3, line 29, delete "courts" and insert "**court**".

Page 4, line 3, delete "its" and insert "**the amounts and revenues due under**".

Page 4, line 4, delete "investment in".

Page 4, line 12, delete "securitizing the revenue stream from" and insert "**the securitization of the amounts and revenues due under**".

Page 4, line 13, delete "between the state and tobacco product manufacturers".

Page 6, line 42, after "state." insert "**The corporation is subject to the provisions of 25 IAC 5 concerning equal opportunities for minority business enterprises and women's business enterprises to participate in procurement and contracting processes.**".

Page 8, line 29, after "proceeds of" delete "the".

Page 10, line 21, after "revenues" insert "**as provided in the resolution or trust agreement authorizing or securing the bonds**".

Page 11, line 7, delete "a" and insert "**the**".

Page 13, line 31, delete "part of" and insert "**considered to be incorporated in**".

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Page 15, line 21, after "sales" insert "**agreements**".

Page 15, line 25, after "sales" insert "**agreements**".

Page 19, line 10, after "or" insert "**on**".

and when so amended that said bill do pass.

(Reference is to HB 1364 as introduced.)

CRAWFORD, Chair

Committee Vote: yeas 15, nays 7.

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